

MONTANA LEGISLATIVE HISTORY

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Chapter 199 19 93

Bill H S 117

Original bill & history ✓ c

H. Committee on Judiciary

Hearing Date(s) Mar 05 ✓ c

 c

 c

 c

Date Out Mar 05 ✓ c

S. Committee on Judiciary

Hearing Date(s) Jan 13 ✓ c

Jan 25 ✓ c

 c

 c

Jan 26 ✓ c

Did this bill originate in an interim committee? Yes No

Committee

Report

CHAPTER NUMBER 95

EFFECTIVE DATE: 03/16/93

SB 117 INTRODUCED BY HALLIGAN

AUTHORIZE FAMILY LAW MEDIATION PROCESS

1/09	INTRODUCED		
1/09	REFERRED TO JUDICIARY		
1/13	HEARING		
1/26	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	2ND READING PASSED	47	0
1/28	3RD READING PASSED	45	0
	TRANSMITTED TO HOUSE		
1/29	FIRST READING		
1/30	REFERRED TO JUDICIARY		
3/05	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/10	2ND READING CONCURRED	85	14
3/12	3RD READING CONCURRED	84	11
	RETURNED TO SENATE WITH AMENDMENTS		
3/16	2ND READING AMENDMENTS CONCURRED	50	0
3/17	3RD READING AMENDMENTS CONCURRED	48	0
3/19	SIGNED BY PRESIDENT		
3/21	SIGNED BY SPEAKER		
3/22	TRANSMITTED TO GOVERNOR		
3/25	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 199		
	EFFECTIVE DATE: 10/01/93		

SB 118 INTRODUCED BY TOWE

CHANGE LICENSING CATEGORIES AND CONDITIONS FOR PERSONAL-CARE FACILITIES

1/09	INTRODUCED		
1/09	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/09	FISCAL NOTE REQUESTED		
1/15	FISCAL NOTE RECEIVED		
1/20	FISCAL NOTE PRINTED		
2/01	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/19	2ND READING PASSED	50	0
2/20	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO HUMAN SERVICES & AGING		
2/23	FIRST READING		
3/02	REVISED FISCAL NOTE REQUESTED		
3/08	REVISED FISCAL NOTE RECEIVED		
3/10	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/29	2ND READING CONCURRED AS AMENDED	93	7
3/29	TAKEN FROM ENGROSSING AND		
	REREFERRED TO APPROPRIATIONS	64	36
4/03	REVISED FISCAL NOTE PRINTED FOR		
	SENATE 3RD READING VERSION		
4/05	HEARING		
4/05	COMMITTEE REPORT—BILL CONCURRED		
4/08	REVISED FISCAL NOTE PRINTED FOR		
	REFERENCE BILL AS AMENDED		
4/14	2ND READING CONCURRED AS AMENDED	95	4
4/14	3RD READING CONCURRED	92	8

1 Senate BILL NO. 117
 2 INTRODUCED BY Kelly
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING MEDIATION
 5 OF FAMILY LAW PROCEEDINGS; PROVIDING FOR SUBMITTING
 6 PROCEEDINGS TO MEDIATION; TOLLING AN APPLICABLE STATUTE OF
 7 LIMITATIONS DURING MEDIATION; PROVIDING CONFIDENTIALITY FOR
 8 MEDIATION PROCEEDINGS; PROVIDING FOR SUBMISSION OF MEDIATION
 9 AGREEMENTS TO THE COURT; PROVIDING REQUIREMENTS FOR
 10 MEDIATORS; AND AUTHORIZING COURTS TO ADOPT FEES FOR
 11 MEDIATION PROCEEDINGS."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 NEW SECTION. Section 1. Family law mediation --
 15 exception. (1) The district court may at any time consider
 16 the advisability of requiring the parties to dissolution of
 17 marriage, a child custody proceeding, or a child support
 18 proceeding to participate in the mediation of the case. Any
 19 party may request mediation. The court may require the
 20 attendance of the parties or the representatives of the
 21 parties with authority to settle the case at the mediation
 22 sessions.

23 (2) The court may not order mediation if the court
 24 determines that there is probable cause to believe that one
 25 of the parties or a child of a party has been physically or

1 sexually abused by the other party.

2 (3) The court shall appoint a mediator from the list
 3 maintained pursuant to [section 6]. By agreement of all
 4 parties, mediators not on the list may be appointed.

5 (4) The court may adopt rules to implement [sections 1
 6 through 8].

7 NEW SECTION. Section 2. Mediation proceeding --
 8 tolling of statute of limitations. (1) The purpose of a
 9 mediation proceeding is to reduce the acrimony that may
 10 exist between the parties and to develop an agreement that
 11 is supportive of the best interests of a child involved in
 12 the proceeding.

13 (2) The mediator shall attempt to effect a settlement
 14 of the child custody, child support, visitation, or property
 15 settlement dispute. The mediator may not use coercive
 16 measures to effect the settlement. The mediator may
 17 recommend that a party obtain assistance from other
 18 resources in the community.

19 (3) Subject to [section 1(1)], the mediator may exclude
 20 attorneys from the mediation sessions. The parties'
 21 attorneys may confer with the mediator prior to the
 22 mediation session and may review and approve any agreement.

23 (4) An applicable statute of limitations is tolled as
 24 to the participants during the period of mediation. The
 25 tolling commences on the date the parties agree in writing

to participate in the mediation and ends on the date the mediation is officially terminated by the mediator.

NEW SECTION. Section 3. Proceedings -- records -- confidentiality. Mediation proceedings must be conducted in private. All records of a mediation proceeding are confidential and may not be used in evidence in an action enumerated in [section 1]. Matters subject to the mediation proceeding are confidential. A mediator or a party to the mediation is not subject to compelled disclosure of any part of the mediation proceeding.

NEW SECTION. Section 4. Mediator recommendation. If the parties are unable to reach an agreement, the mediator may recommend to the court that an investigation be conducted or that other action be taken to assist the parties to resolve the controversy before the court hears the issues. The mediator may not conduct the investigation. The mediator may, upon stipulation by the parties, recommend temporary orders to the court prior to the final decree.

NEW SECTION. Section 5. Mediation agreement. An agreement reached by the parties as a result of mediation must be discussed by the parties with their attorneys, if any, and the approved agreement may be submitted to the court. An agreement may not be submitted to the court if any party objects. The court may adopt the agreement.

NEW SECTION. Section 6. Mediator list. The district

court shall establish and maintain a list of mediators available to assist parties in formally mediating disputes as provided in [sections 1 and 2]. The list of mediators must be maintained by the clerk of court. The clerk of court may accept the applications of individuals who meet the qualifications required under [section 7] and who seek placement on the mediator list. The applications must be presented to the court for review and approval. A mediator may be a member of the professional staff of a district court, probation department, mental health services agency, or private mediation service.

NEW SECTION. Section 7. Mediator qualifications. A mediator shall meet the following minimum qualifications:

(1) knowledge of the court system and the procedures used in family law matters;

(2) knowledge of other resources in the community to which the parties may be referred for assistance;

(3) knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, and child custody research; and

(4) a minimum of 40 hours of certified mediation training.

NEW SECTION. Section 8. Funding. A court may establish a fee schedule for the costs of administering [sections 1

1 through 8]. The fees must be paid by the parties to the
2 mediation proceeding.

3 NEW SECTION. **Section 9.** Codification instruction.
4 [Sections 1 through 8] are intended to be codified as an
5 integral part of Title 40, chapter 4, and the provisions of
6 Title 40, chapter 4, apply to [sections 1 through 8].

-End-

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Sen. Bill Yellowtail, on January 13, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 117
Executive Action: SB 12
SB 19
SB 29
SB 64

HEARING ON SB 117

Opening Statement by Sponsor:

Senator Halligan, District 29, opened by stating that SB 117 would place family disputes into a mediation or resolution dispute oriented format. SB 117 would authorize mediation in family law proceedings. It would be voluntary, to allow mediation to occur. If a dissolution was submitted to a Court, it would automatically assign it to a special person to handle

the case so it would not end up in a public setting. SB 117 places the proceeding into a more relaxed setting where attorneys could have input, but the mediator has control over the situation. The Court could use the mediation process if the petition was just starting or already existing. Senator Halligan summarized all sections of SB 117.

Proponents' Testimony:

NONE

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Grosfield questioned Senator Halligan about Section 7. Senator Halligan responded mediation training is available in Montana on a regular basis. There are ample therapists in Montana who specialize in family law and already meet the 40 hour mediation training.

Senator Grosfield asked Senator Halligan if certified mediators would have training in family problem areas. Senator Halligan responded the mediators would have to have knowledge in child development along with 40 hours of mediation training.

Senator Grosfield questioned Senator Halligan about Section 1. Senator Halligan said he would like to make a provision in SB 117 stating the Court must order the mediation and not request it.

Senator Blaylock asked Senator Halligan about the proposed amendment. Senator Halligan said the amendment would include the provision that the mediation agreement must be submitted to the court.

Senator Rye questioned Senator Halligan about the effective date of SB 117. The effective date would be October 1.

Senator Towe asked Senator Halligan about confidentiality in SB 117. Senator Towe suggested a provision that if the parties object to the full agreement being filed and being a part of public record, a summarized version could be submitted. Senator Halligan agreed this would be a better approach.

Senator Towe asked Senator Halligan regarding the provision in Section 1 paragraph 2. Senator Halligan stated if the Court has found probable cause to suspect sexual or physical abuse of a child, it will go to go to the Department of Family Services and they would conduct an investigation. The Court may not be qualified in mediation skills in order to deal with sexual or physical abuse.

Senator Towe asked Senator Halligan about giving the Court the discretion in requiring a mediator. Senator Halligan responded by saying there was no problem giving the Court the discretion, if there is evidence of physical or sexual abuse.

Closing by Sponsor:

Senator Halligan closed stating SB 117 is the first attempt to build an informal, yet formal mechanism to allow parties to get out of the court structure and into a more informal and productive session with non-attorneys to resolve matters. It gives the Courts discretion to provide standards and criteria to have productive sessions. SB 117 would reduce the case load of District Court Judges, therefore making them more productive.

EXECUTIVE ACTION ON SB 12

Motion:

Senator Franklin moved to amend SB 12.

Discussion:

Senator Franklin explained the amendments.

Chair Yellowtail said normally a statement of intent is necessary to give guidance to the administrative agency for the purpose of rule writing. Chair Yellowtail questioned Senator Franklin whether the proposed reduction in the language in the statement of intent would still preserve that principle. Senator Franklin replied that it will and that the rest of the language is editorial and does not serve any purpose.

Senator Towe questioned Senator Franklin about the language: "Therefore it is additionally the intent of the legislature by requiring, if a person convicted of a sexual abuse offense undergo HIV testing to eliminate the traumatic aftermath of such crimes of the victim." Senator Franklin responded the language makes a presumption that this will help reduce any traumatic aftermath.

Senator Towe further questioned Senator Franklin about striking "aftermath of such crimes." and whether it was helpful to the victims. Senator Franklin replied the degree to which it is helpful it is already stated in SB 12 lines 8 through 11.

Vote:

Motion carried to amend SB 12. Senators Rye, Crippen, Harp voting no.

Motion/Vote:

Senator Halligan moved SB 12 DO PASS AS AMENDED. Motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 19

Motion:

Senator Blaylock moved SB 19 DO PASS.

Discussion:

Senator Rye would like to go on record voting no. Senator Rye stated the School Board Association had a legitimate point that SB 19 would remove a bargaining chip which is traditionally in school board teacher negotiations. His aversion to any increase in litigation is also a factor in his decision.

Vote:

SB 19 DO PASS. Senators Rye, Harp, Grosfield voting no.

EXECUTIVE ACTION ON SB 29

Motion:

Senator Towe moved to amend SB 29.

Discussion:

Senator Towe explained the amendments.

Senator Grosfield questioned Senator Towe on the terminology of the first amendment. Senator Towe replied the word "conviction" would create confusion. The Criminal Code most of the time uses the word "committed" and not "convicted." That is why the word was changed.

Senator Grosfield asked Senator Towe whether SB 29 is close to treading on the concept "innocent until proven guilty." Senator Towe explained when dealing with two or more alleged offenders, one of them is convicted, and the other implicated but judged innocent, there is no longer a crime of gang rape. If the word "committed" is used the County Attorney in each trial would have to prove beyond a reasonable doubt that the offenses occurred or they wouldn't get a gang rape conviction with the higher penalty.

Senator Crippen asked Mr. Conner, Assistant Attorney General, about the language in SB 29. Mr. Conner stated the word "conviction" ought to be left in SB 29. If SB 29 is changed to two or more persons who "committed" the offense, the defendant would go to prison for a longer amount of time even though they were not convicted. In our system, defendants have to be convicted of a crime before going to prison. Mr. Conner felt "conviction" should be left in and maybe define the term gang rape. The word "conviction" is defined in the Code as a judgement of conviction after trial or a plea of guilty.

Vote:

ROLL CALL

SENATE COMMITTEE Judiciary DATE 1-13-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		
William Lane	X		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 13, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 12 (first reading copy -- white), respectfully report that Senate Bill No. 12 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 1, line 24 through page 2, line 7.
Strike: line 24 through "the victims." on page 2, line 7
2. Page 2, line 8.
Strike: "deadly"
3. Page 2, line 9.
Following: "if"
Strike: ", tragically,"
4. Page 3, line 1.
Following: "administered"
Strike: "a"
Following the first occurrence of: "victim"
Insert: ", "
5. Page 3, line 2.
Strike: "test"
Insert: "testing according to currently accepted protocol, using guidelines established by the centers for disease control, U.S. department of health and human services,"

-END-

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"foreign".

Discussion: Ms. Lane explained this amendment would remove all references to "foreign" in the bill.

Vote: The motion to amend CARRIED UNANIMOUSLY.

Motion/Vote: Senator Harp MOVED SB 146 AS AMENDED DO PASS.
Motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 117

Motion: Senator Halligan MOVED TO AMEND SENATE BILL 117.
(exhibit 1)

Discussion: Senator Halligan said he had talked to Senator Grosfield, and Representative Ryan, and others, as well as some of the people from the court to be sure they could continue mediation. He explained his process in working out the amendments.

Senator Towe commented on the language in section 2 describing abuse and asked what was meant by authorize or permit continuation of mediated negotiations. He asked Senator Halligan if that meant they could authorize, but not continue it. He asked if the key was continuation or what the meaning was.

Senator Halligan said the people who brought the idea to him, were adamant there be no sexual abuse and not any deviation at all. This was their "tempered" language. He said he was not completely comfortable with it but would let Representative Howard Toole work on it in the House. If the Court did not authorize continuation of mediation because probable cause had not been proved in a child abuse or neglect proceeding, the Court would initiate it.

Senator Towe asked if Senator Halligan was suggesting that there was any basis for not authorizing the mediation, but this only comes into play in connection with continuing it. Senator Halligan said no, this is not the best language, but the Court could say "I think there is reason to suspect that there is physical or emotional abuse. The key is that both parties would want mediation. If one party objected, then no."

Senator Towe said that is tempered somewhat by the language in the preceding section where it says only if one of the parties desire the mediation the court could order. It then would mean if one parties does not agree with it, they can not go forward. If both parties agree they can get mediation started but will not be able to force continuation of it.

Senator Halligan said in the existing statute when teacher or a parent's doctor sees a child in a setting their standard is "reason to suspect" and we are using that standard now. If a little less than probable cause is there, if a child was

intimidated by an abuser, this would cause problems.

Vote: The MOTION TO AMEND SB 117 CARRIED UNANIMOUSLY.

Motion: Senator Halligan MOVED TO AMEND SB 117 on page 4, line 21 and 22 to strike the "minimum of 40 hours of certified mediation training".

Discussion: Senator Halligan said he would like the House to fix this area, he believed it was too strict. There are a lot of existing personnel in Courts now to help with mediation that do not have 40 hours of certified mediation training, and this language would prohibit them from continuing.

Chair Yellowtail repeated the motion and said this would strike lines 21 and 22 in their entirety and will assume the House will come back with something that will address that issue.

Senator Halligan said he recognized that rural communities need that access and rural Judges could look at this and see what is the most applicable to them. He pointed out that many did not have the time or the money to go take the training and there were many people who have the ability to the mediation, such as licensed counselors and people with a BA. He said this can be removed for now and if something needs to be added we can do so.

Vote: The MOTION TO AMEND SENATE BILL 117 CARRIED with Senator Crippen voting NO.

Motion: Senator Halligan MOVED SENATE BILL 117, AS AMENDED, DO PASS.

Discussion: Senator Towe said he had a question on the amendments and asked Senator Halligan to comment on section 4, page 3, where we are changing "may" to "shall". He asked why we were making it mandatory that a mediator's recommendation be submitted to Court.

Senator Halligan said when we look at both section 4 and section 5 we see that if there was an agreement if both parties go to Court and there was a recommendation, it should be available to the Court.

Vote: Motion to Do Pass SB 117 AS AMENDED, CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 78

Discussion: Ms. Lane, Legislative Council Staff Person, handed out proposed amendments, (exhibit 2) and said they were requested by John Conner, Attorney General's Office. Originally the wording in this bill did not quite make sense and they requested these amendments. She explained the changes made by the amendments.

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE _____

25.93

[illegible]

SENATE STANDING COMMITTEE REPORT

Page 1 of 6
January 26, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 37 (first reading copy -- white), respectfully report that Senate Bill No. 37 be amended as follows and as so amended do pass.

Signed: William "Bill" Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 5.

Following: "ORDERS;"

Insert: "REQUIRING NOTIFICATION OF VICTIMS WHEN ACCUSED STALKERS ARE RELEASED ON BAIL; EXEMPTING THE OFFENSE OF STALKING FROM BAIL SCHEDULES; AMENDING SECTIONS 40-4-121, 46-9-108, AND 46-9-302, MCA;"

Following: "AN"

Insert: "IMMEDIATE"

2. Page 1, line 7.

Following: line 6

Insert: "

STATEMENT OF INTENT

The legislature finds that there are not adequate provisions in existing state law to protect stalking victims. Civil restraining orders are often difficult to obtain and alone are often inadequate to deter a stalker from committing an act of violence. It is the intent of the legislature to criminalize and punish the activities of people who repeatedly watch, follow, harass, or threaten someone when such activity causes the victim substantial emotional distress or reasonable apprehension of bodily injury or death. It is the intent of the legislature to give law enforcement personnel recourse before an attack takes place. Further, it is the intent of the legislature that the offense not apply to an otherwise lawful activity. In particular, the legislature does not want to place a chill on constitutionally protected rights, such as the right to demonstrate, to assemble, and to picket or on the full exercise of freedom of speech and freedom of the press."

3. Page 1, lines 10 through 13.

Following: "if" on line 10

Strike: remainder of line 10 through "request," on line 13

Insert: "the person purposely or knowingly"

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SENATE STANDING COMMITTEE REPORT

Page 1 of 2
January 26, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 117 (first reading copy -- white), respectfully report that Senate Bill No. 117 be amended as follows and as so amended do pass.

Signed: William Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 1, lines 16 and 17.

Following: "to" on line 16

Strike: remainder of line 16 through line 17

Insert: "a"

2. Page 1, line 18.

Following: "proceeding"

Insert: "under this chapter"

3. Page 1, line 19.

Following: "request"

Insert: "the court to order"

4. Page 1, line 19.

Strike: "The"

Insert: "If the parties agree to mediation, the"

5. Page 1, line 23.

Following: "not"

Strike: "order mediation"

Insert: "authorize or permit continuation of mediated negotiations"

6. Page 1, line 24.

Strike: "determines that there is probable cause to believe"

Insert: "has reason to suspect"

7. Page 1, line 25.

Following: "physically"

Insert: ", "

Strike: "or"

8. Page 2, line 1.

Following: "sexually"

Insert: ", or emotionally"

9. Page 2, line 14.
Following: "visitation,"
Insert: "maintenance,"
10. Page 3, line 1.
Following: "mediation"
Insert: "or when the court orders mediation, whichever is later,"
11. Page 3, lines 13 and 14.
Strike: "may recommend"
Insert: "shall submit the mediator's recommendation"
Following: "court" on line 13
Strike: remainder of line 13 through "taken" on line 14
12. Page 3, lines 15 and 16.
Following: "controversy" on line 15
Strike: remainder of line 15 through "issues" on line 16
13. Page 3, line 16.
Following: "issues."
Strike: remainder of line 16
14. Page 4, line 9.
Strike: "professional"
Following: "staff"
Insert: "or contracted staff"
15. Page 4, line 17.
Following: ";"
Insert: "and"
16. Page 4, line 18.
Following: "(3)"
Insert: "if applicable,"
17. Page 4, line 20.
Following: "research"
Strike: "; and"
Insert: "."
18. Page 4, lines 21 and 22.
Strike: subsection (4) in its entirety

-END-

Amendments to Senate Bill No. 117
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane
January 25, 1993

Stamp:
STAFF OF THE SENATE
JAN 29 1993
JUDICIARY COMMITTEE

1. Page 1, lines 16 and 17.
Following: "to" on line 16
Strike: remainder of line 16 through line 17
Insert: "a"
2. Page 1, line 18.
Following: "proceeding"
Insert: "under this chapter"
3. Page 1, line 19.
Following: "request"
Insert: "the court to order"
4. Page 1, line 19.
Strike: "The"
Insert: "If the parties agree to mediation, the"
5. Page 1, line 23.
Following: "not"
Strike: "order mediation"
Insert: "authorize or permit continuation of mediated negotiations"
6. Page 1, line 24.
Strike: "determines that there is probable cause to believe"
Insert: "has reason to suspect"
7. Page 1, line 25.
Following: "physically"
Insert: ", "
Strike: "or"
8. Page 2, line 1.
Following: "sexually"
Insert: ", or emotionally"
9. Page 2, line 14.
Following: "visitation,"
Insert: "maintenance,"
10. Page 3, line 1.
Following: "mediation"
Insert: "or when the court orders mediation, whichever is later,"
11. Page 3, lines 13 and 14.
Strike: "may recommend"
Insert: "shall submit the mediator's recommendation"

Following: "court" on line 13
Strike: remainder of line 13 through "taken" on line 14

12. Page 3, lines 15 and 16.
Following: "controversy" on line 15
Strike: remainder of line 15 through "issues" on line 16

13. Page 3, line 16.
Following: "issues."
Strike: remainder of line 16

14. Page 4, line 9.
Strike: "professional"
Following: "staff"
Insert: "or contracted staff"

15. Page 4, line 17.
Following: " ; "
Insert: "and"

16. Page 4, line 18.
Following: "(3)"
Insert: "if applicable,"

17. Page 4, line 20.
Following: "research"
Strike: " ; and "
Insert: "."

18. Page 4, lines 21 and 22.
Strike: subsection (4) in its entirety

Recommendation. In Ms. Bergman's experience, mediation is a process which helps people work through their problems, and the mediator is knowledgeable in that process. It allows for an open exchange of ideas and gathering information. A mediator must pass a minimum of 40 hours training in order to be certified. Ms. Bergman is concerned that section 4 does not indicate that a mediator should have working knowledge or be certified in mediation and that it should be added to the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. GRIMES asked SEN. HALLIGAN the reason for the change of language from "may" to "shall" on page 3, line 4. SEN. HALLIGAN said the Senate Judiciary Committee felt that the word "shall" is more direct and enforceable.

REP. VOGEL, referring to section 4, line 17, "shall submit the mediator's recommendation," asked SEN. HALLIGAN whether, if the court doesn't request the mediator's recommendations, the mediator is still required to be in court; he wondered whether the language should say "shall" submit upon request. SEN. HALLIGAN said it wasn't that favored in the Senate Judiciary Committee either, but they felt that the mediator is needed in court to present pertinent material regarding specific cases.

Closing by Sponsor:

SEN. HALLIGAN said that, although mediators are receiving a negative reaction from attorneys in this process, a mediator is generally included when an attorney is involved in family/divorce law. He also explained that attorneys want to get their clients into an alternative dispute resolution process and away from the antagonism of the court. He encouraged the committee to clean up the bill, specifically section 4, and vote do pass.

EXECUTIVE ACTION ON SB 193

Motion: REP. BROWN MOVED SB 193 BE CONCURRED IN.

Discussion:

REP. RICE is concerned about deleting from the law any requirement of consideration for restitution and family support. He proposed an amendment of rules to factor in those responsibilities.

REP. BROWN explained that the waiver is a provision for an exemption from payment if the individual is not earning enough to

EXECUTIVE ACTION ON SB 202

Motion: REP. BROOKE MOVED SB 202 BE TABLED.

Discussion:

CHAIRMAN FAGG said he had met with SEN. ETHEL HARDING, Senate District 25, Polson. She believes the bill doesn't do anything and that her constituents and the state would be better off if the bill were tabled.

REP. VOGEL said he supports the bill but that it had been amended a great deal in the Senate. He asked that it be amended back in conference committee.

REP. RICE asked whether, since SB 202 was tabled before it was heard in committee, it could be withdrawn from legislation. CHAIRMAN FAGG asked Bob Person, Legislative Council, if it is possible to withdraw a bill from legislation, and Mr. Person said it is not possible to terminate a bill; the easiest way to handle this is to table the bill in committee and to notify Legislative Information that "SB 202 has been tabled in committee at the request of the sponsor."

Vote: SB 202 BE TABLED. Motion to table in committee at request of the sponsor. Motion carried 12-6 with REPS. BERGMAN, BIRD, GRIMES, SMITH, RICE and VOGEL voting no.

EXECUTIVE ACTION ON SB 117

Motion: REP. GRIMES MOVED SB 117 BE CONCURRED IN.

Motion: REP. TOOLE moved to strike section 4 from the bill.

Discussion:

REP. TOOLE is concerned that people who call themselves mediators without the proper training, i.e., mediation certification, will be representing clients in court.

REP. SMITH agrees with REP. TOOLE and would also like to insert mediator qualifications as recommended by Ms. Bergman.

Motion: REP. CLARK moved a substitute motion to strike all of section 4 except for the last sentence.

Discussion:

REP. GRIMES recommended going back to the original language of section 4 and insert on lines 16 and 17 deleted language: "The mediator may recommend the mediator's request to the court that an investigation be conducted."

the Teachers Retirement Board to recognize and implement certain family law orders. Right now, neither retirement system is able to recognize court orders dealing with such things as divorces, indigent child support, child support, and spouse support. This bill will change that by making them subject to those court orders.

Proponents' Testimony:

David Senn, Director, Teachers Retirement System, presented written testimony. EXHIBIT 1

Tom Bilodeau, Montana Education Association, solicited support for SB 117.

Linda King, Public Employees Retirement Division (PERF), explained that most private plans are called Defined Contribution Plans, meaning that the value of the account is known on any given date because the value is money in the account. Montana's plans are different. Their benefits are defined by formula, so the amount of money that a member may have in the account bears little, if any, resemblance to the value of the benefit when they retire. The distinction is that a person cannot pay out a family law order before the actual retirement date on a retirement system member because until that actual date, the benefits aren't known.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON SB 117

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, Senate District 29, Missoula, said that SB 117 sets up a mediation process that is at the discretion of the judge only if the parties agree.

Proponents' Testimony:

Fay Bergman, mediation lawyer, Missoula, has done mediation for the last ten years, and she and REP. TOOLE served many times together on the Resolution Dispute Committee for the State Bar. She explained that mediation is uniquely suited for family disputes. Her only concern with the bill is section 4, Mediator

REP. VOGEL supported courts allowing information from mediation. He recommended the following language: "The mediator shall recommend to the court, upon request of one or more of the mediated parties." The bill provides that the mediator shall give a recommendation to the court, even if is not wanted.

REP. TOOLE is concerned that the legislature will provide an invitation to the negotiation process. If a mediator is not at that particular level of training or is not certified to mediate, it's left up to the courts to decide with an agreement.

REP. VOGEL that, just for discussion, and not to be considered as a substitute motion, he would like to insert after "shall" on line 17: "at the request of the court or at least one of the parties."

Vote: REP. CLARK'S substitute motion to strike all of section 4 except for the last sentence carried 16-2 with CHAIRMAN FAGG and REP. VOGEL voting no.

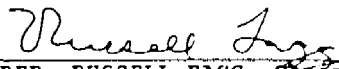
Motion/Vote: REP. SMITH moved an amendment to insert on page 5, lines 1 and 2 after the word "and": "knowledgeable about mediation process." Amendment carried 16-2 with REPS. BIRD and WINSLOW voting no. See paragraph below for further explanation on REP. BIRD'S vote.

REP. BIRD asked REP. SMITH if she had any objection to adding the word "working" before "knowledge of mediation process?" REP. BIRD believes that REP. SMITH'S amendment is too vague without the word "working," and REP. SMITH agreed. Being in agreement with each other, REP. BIRD changed her vote on REP. SMITH'S amendment. Therefore, only REP. VOGEL voted against the amendment.

Vote: SB 117 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 11:00 a.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHÉ, Secretary

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3-5-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen		✓	
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

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CS-09

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 117 (third reading copy -- blue) be concurred in as amended.

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Toole

1. Page 3, lines 15 and 16.

Strike: "If" on line 15 through end of line 16

2. Page 3, lines 17 and 18.

Strike: "SHALL" on line 17 through "court" on line 18

3. Page 3, lines 19 and 20.

Strike: "to assist" on line 19 through "controversy" on line 20

Strike: "." on line 20

4. Page 4, line 22.

Strike: "AND"

5. Page 5, line 1.

Following: "and"

Insert: "; and

(4) knowledge of the mediation process"

-END-

Committee Vote:
Yes 12, No 0.

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. *SB 117*
DATE *March 5, 1993* SPONSOR(S) *M. Halligan*
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.